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BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **GAREY LEE WEBER, D.P.M.** **20360 SW Birch Street, Suite 270** **Newport Beach, CA 92660** **Podiatrist License No. E-1371,** Respondent.	Case No. 500-2018-000650 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Brian Naslund (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs.

2. On or about August 7, 1970, the Board of Podiatric Medicine issued Podiatrist License No. E-1371 to Garey Lee Weber, D.P.M. (Respondent). Podiatrist License No. E-1371 was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2020, unless renewed.

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DISCIPLINARY HISTORY

3. In a disciplinary action entitled, "In the Matter of the Fifth Amended Accusation Against: Garey Lee Weber, D.P.M.," Case No. 1B-95-46977, the Board of Podiatric Medicine issued a decision, effective May 26, 1999, in which Respondent's Podiatric License No. E-1371 was revoked. However, the revocation was stayed and Respondent's Podiatric License No. E-1371 was placed on probation for a period of five (5) years with certain terms and conditions.

4. In a disciplinary action entitled, "In the Matter of the Accusation and Petition to Revoke Probation Against: Garey Lee Weber, D.P.M.," the Board of Podiatric Medicine issued a decision, effective October 19, 2001, in which Respondent's Podiatric License No. E-1371 was revoked.

5. In an action entitled, "In the Matter of the Petition for Penalty Relief/Reinstatement of Revoked Certificate of: Garey Lee Weber," Case No. 1B-2004-159986, the Board of Podiatric Medicine issued a decision, effective April 4, 2005, in which Respondent's Podiatric License No. E-1371 was reinstated and put on probation for a period of five (5) years with certain terms and conditions.

6. In an action entitled, "In the Matter of the Petition for Termination of Probation Involving: Garey Lee Weber, D.P.M.," Case No. 1B-2004-159986, the Board of Podiatric Medicine issued a decision, effective November 24, 2008, in which the probation imposed on Respondent's Podiatric License No. E-1371 was terminated and the license was fully restored.

JURISDICTION

7. This First Amended Accusation, which supercedes the Accusation filed on April 22, 2019, is brought before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

8. Section 2222 of the Code states:

> The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out

this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

9. Section 2227 of the Code states, in pertinent part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be place on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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10. Section 2228.5 of the Code states:

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(f) For purposes of this section:

(1) "Board" means the California Board of Podiatric Medicine.

(2) "Licensee" means a person licensed by the California Board of Podiatric Medicine.

11. Section 2497 of the Code states:

(a) The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.

(b) The board may hear all matters, including but not limited to, any contested case or may assign any such matters to an administrative law judge. The proceedings shall be held in accordance with Section 2230. If a contested case is heard by the board itself, the administrative law judge who presided at the hearing shall be present during the board's consideration of the case and shall assist and advise the board.

12. Section 2234 of the Code states, in pertinent part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

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13. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

COST RECOVERY

14. Section 2497.5 of the Code states:

> (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.
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> (b) The costs to be assessed shall be fixed by the administrative law judge and shall not be increased by the board unless the board does not adopt a proposed decision and in making its own decision finds grounds for increasing the costs to be assessed, not to exceed the actual and reasonable costs of the investigation and prosecution of the case.
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> (c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.
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> (d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
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> (e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.
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> (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within one year period for those unpaid costs.
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> (f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

15. Respondent has subjected his Podiatric License No. E-1371 to disciplinary action under sections 2222, 2227, and 2497, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

16. On or about April 23, 2012, Respondent examined Patient A for a consultation at Respondent's practice, California Foot & Ankle Institute (CFAI). Patient A had bunions on both feet and had been experiencing cramping in her arches and toes, especially in her right foot. Patient A reported pain and difficulty in wearing shoes and doing her daily activities.

17. On or about the same day, Respondent performed a physical examination, and found that Patient A had a hallux valgus of both feet with osteitis, bursitis, capsulitis, neuritis, and neuralgia, tailor's bunion in both feet, hammertoe deformity in both feet, and ingrown nails in the right foot. Respondent took photographs and ordered x-rays for Patient A's feet. His plan for treatment, which was discussed with Patient A, included a bunionectomy and exostectomy of the proximal and distal phalanges of the great toe, first for the left foot and then for the right foot. Patient A signed a consent to surgery and other diagnostic treatment procedures at the same visit.

18. On or about April 25, 2012, Patient A came back to CFAI for a preoperative workup for the upcoming surgery on her left foot. An EKG was done and labs were drawn.

19. On or about April 27, 2012, Respondent performed the following on Patient A's left foot: (1) base wedge osteotomy of the first metatarsal with IM banding; (2) bunionectomy; (3) lateral capsular release of the first metatarsophalangeal joint (MTPJ); (4) osteotomy of the proximal hallucal phalanx; (5) exostectomy of the fifth metatarsal head; (6) transpositional osteotomy of the fifth metatarsal; (7) exostectomy of the hallucal interphalangeal joint (IPJ); (8) arthroplasty of the proximal interphalangeal joint (PIPJ) of the fourth toe; and (9) capsulotomy with extensor digitorum longus (EDL) and flexor digitorum longus (FDL) tenotomies of the

[1] To protect the privacy of the patient, the patient's name has not been included in this pleading. Respondent is aware of the patient's identity.

fourth MTPJ. The IM banding was performed about the first and second metatarsals using a curved needle.

20. Immediately following surgery, Patient A was given written instructions not to walk without a postoperative shoe.

21. On or about April 30, 2012, Patient A came to CFAI and was examined by D.R., another podiatrist at the practice. Patient A reported having minimal pain and was ambulating in the post-op shoe to tolerance. D.R. examined Patient A's left foot and ordered x-rays. Postoperative care at this visit included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes four and five to stabilize the affected area.

22. Respondent's records for Patient A included a report for the x-rays taken on or about April 30, 2012. The report, which was signed by D.R., noted that there was a "correction of digits of the left foot with satisfactory alignment of stated segments."

23. On or about May 2, 2012, Patient A returned to CFAI and was examined by P.K., another podiatrist at the practice. Patient A requested a refill of her pain medication, but said that she was improving overall. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes four and five to stabilize the affected area.

24. On or about May 4, 2012, Patient A returned to CFAI and was examined by P.K. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

25. On or about May 7, 2012, Patient A returned to CFAI and was examined by D.R. Patient A reported having pain and throbbing in her foot at night. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes four and five to stabilize the affected area.

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26. On or about May 9, 2012, Patient A returned to CFAI and was examined by P.K. Patient A told P.K. that the entire medial column from the hallux to the first ray was bothering her, and she was still experiencing some pain at night. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one and five to stabilize the affected area. The entire hallux splint was changed out, while the fourth was left intact and the fifth was splinted with PF movement.

27. On or about May 11, 2012, Patient A returned to CFAI and was examined by D.R. X-rays were taken of Patient A's foot. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one and five to stabilize the affected area.

28. Respondent's records do not include a report of the May 11, 2012, x-ray findings. The x-rays show gapping at the osteotomy proximal to the phalanx, fifth metatarsal head subluxing, and evidence of a first metatarsal medial cortex fracture.

29. On or about May 14, 2012, Patient A returned to CFAI and was examined by P.K. Patient A's remaining sutures were removed. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one and five to stabilize the affected area.

30. On or about May 16, 2012, Patient A returned to CFAI and was examined by P.K. Patient A's remaining sutures on the fourth toe were removed. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

31. On or about May 21, 2012, Patient A returned to CFAI for further follow up and was examined by P.K. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

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32. On or about May 22, 2012, Patient A returned to CFAI early and complained of a burning sensation in her foot. Patient A thought the dressings on her foot were too tight. The dressings were removed and Patient A's foot was examined by D.R. Patient A received the regular postoperative care including MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area. Patient A's pain medication prescription was refilled, and she was advised to ice and elevate her foot.

33. On or about May 25, 2012, Patient A returned to CFAI and was examined by D.R. X-rays were taken. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

34. Respondent's records for Patient A included a report for the x-rays taken on or about May 25, 2012. D.R.'s impressions included correction of digits of the left foot with satisfactory alignment of stated segments.

35. On or about June 1, 2012, Patient A returned to CFAI and was examined by P.K. The records note that Patient A's fifth MTPJ left the floor dorsiflexed at rest without ground purchase, and that the fifth toe MTPJ capsule and local dorsal skin were still slightly contracted dorsally. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area. The hallus and fifth toe were splinted with PF movement, with the fourth toe in valgus.

36. On or about June 5, 2012, Patient A returned to CFAI and was examined by D.R. Under the subjective heading of the note, D.R. referenced future surgery with no other details. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

37. On or about June 8, 2012, Patient A returned to CFAI and was examined by P.K. Patient A reported that she felt a burning sensation to the distal medial hallux near the

exostectomy incision and burning in the fourth toe. P.K. examined and photographed Patient A's left foot. X-rays were also taken. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area. Patient A reported that she did not want surgery on her right foot until the left had "calmed down enough."

38. Respondent's records do not include a report of the June 8, 2012 x-ray findings. The x-rays show gapping at all the osteotomy sites with some evidence of healing. They also show that the first metatarsal was significantly dorsiflexed, and the fifth metatarsal head was subluxing medially.

39. On or about June 11, 2012, Patient A returned to CFAI and was examined by P.K. Patient A reported that the previous burning sensation to the distal medial hallux and fourth toe did not return, but that the fifth ray was burning a little dorsally. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toes one, four, and five to stabilize the affected area.

40. On or about June 13, 2012, Patient A returned to CFAI and was examined by P.K. Patient A stated that the burning sensation in her fifth toe was continuing. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toe five using paper tape in PF moment to stabilize the affected area. Patient A was told to start weaning out of her post-op shoe and was instructed on how to do range of motion exercises.

41. On or about June 18, 2012, Patient A returned to CFAI and was examined by P.K. Patient A stated that her fifth toe was feeling better. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toe five using paper tape in PF moment to stabilize the affected area.

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42. On or about June 22, 2012, Patient A returned to CFAI and was examined by P.K. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toe five using paper tape in PF moment to stabilize the affected area. P.K. advised Patient A that she should consult with Respondent about having a left foot manipulation under anesthesia (MUA) on the first and fifth MTPJ, a left second digit exostectomy of the distal phalanx, a total nail plate matrixectomy, and a possible left fifth MTPJ tenotomy and capsulotomy.

43. On or about June 27, 2012, Patient A returned to CFAI and was examined by P.K. Patient A had scheduled the surgery on her left foot. Postoperative care again included MicroVas therapy, ultrasound therapy, and hydrotherapy. A surgical dressing was applied to Patient A's foot, and immobilization strapping was applied to toe five using paper tape in PF moment to stabilize the affected area.

44. On or about June 29, 2012, Patient A returned to CFAI and was examined by P.K. P.K. noted that Patient A had scheduled surgery on her left foot and was in the office to sign consent forms, not to receive any postoperative therapy for her left foot. Photos were taken of Patient A's left foot, and Patient A signed surgical consents for a left foot MUA on the first and fifth MTPJ, a left second digit exostectomy of the distal phalanx, a total nail plate matrixectomy, and a possible left fifth MTPJ tenotomy and capsulotomy.

45. On or about July 3, 2012, Patient A went to T.R., D.P.M., to get a second opinion about her upcoming surgery. T.R. took x-rays of Patient A's left foot, and determined that there were fractures in the first and fifth metatarsals. This assessment was reiterated by D.G., D.P.M., and Patient A underwent full reconstructive surgery.

46. Respondent committed gross negligence in his care and treatment of Patient A which includes, but is not limited to, the following:

a. Following surgery, Respondent failed to properly immobilize Patient A's left foot and offload and/or limit weight-bearing;

b. Respondent failed to operate on Patient A's right foot first, which was more symptomatic than the left;

c. Respondent failed to obtain proper informed consent from Patient A by informing her of the risks of not using adequate fixation; and

d. Respondent did not provide proper postoperative care in the way that he failed to consult with D.R. and P.K., who were monitoring Patient A's aftercare, and failed to identify and properly treat Patient A's complications which included a fracture in the medial cortex of the first metatarsal, deviations in the distal portion of the first metatarsal, and increasing rotation of the fifth metatarsal head.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

47. Respondent has further subjected his Podiatric License No. E-1371 to disciplinary action under sections 2222, 2227, and 2497, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in the care and treatment of Patient A, as more particularly alleged in paragraphs 16 through 46, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE
(General Unprofessional Conduct)

48. Respondent has further subjected his Podiatric License No. E-1371 to disciplinary action under sections 2222, 2227, and 2497, as defined by section 2234, in that he committed general unprofessional conduct in his care and treatment of Patient A, as more particularly alleged in paragraphs 16 through 47, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Podiatric Medicine issue a decision:

1. Revoking or suspending Podiatrist License No. E-1371, issued to Respondent, Garey Lee Weber, D.P.M.;

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2. Ordering Respondent, Garey Lee Weber, D.P.M., to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. Ordering Respondent, Garey Lee Weber, D.P.M., if placed on probation, to disclose the disciplinary order to patients pursuant to Business and Professions Code section 2228.5; and

4. Taking such other and further action as deemed necessary and proper.

DATED: August 15, 2019

BRIAN NASLUND
Executive Officer
Board of Podiatric Medicine
Department of Consumer Affairs
State of California
Complainant

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